

Confidential internal Lax family Memo

To: Dear Ma, Sisters, brother and brothers-in-law,

From: Moshe Lax

Date: September 8, 2009 יום ג' לסדר אתם נצבים היום, ה'תשס"ט

RE: Restructuring legal structure of Dynamic Diamond Corp. due to the creditors situation

PROBLEM:

After days, weeks and months of discussions with attorneys of restructure, corporate and tax laws in addition to hired accountants by the attorneys firm it is becoming crystal clear that the old Dynamic co. might become insolvent in regards to future business. (It is of course solvent in the sense of paying its obligations other than the IRS claim) which might result that all future profits in addition of all assets might be seized by the IRS.

It is the understanding of the attorneys that in some way a new corporation needs to be formed rather sooner than later. (See: attached memo from the leading attorney, Warren Martin Jr.)

QUESTION:

The question arises how do we going forward with forming a new corporation and presenting all family member's interests fairly.

DISCUSSION:

My prospective is that we have three (3) options before us. Each of these options has its pros and cons which I will try to lay out in this memo.

The most important part for me personally is to come up with a clear and transparent structure that leaves all ambiguity, vagueness and confusion out and is rather clear, simple and fair.¹

The (3) three options are the following;

1. Option A is what I call the Duty option because if we end up going with this option it would out of my duty to our dear late Tatty that I would be doing this.

¹ See: החכם מובא בתש"א סימן ה' אין שמחה כהתרת הספיקות ופירושו כי אין צער גדול מחוסר בהירות ומסובך בספיקות

It would be...to open a new company which is guided by the צוואה up to the minutest fine point written in there. The צוואה becomes the blueprint how to set up the company legally. In other words everyone's right that's scripted out in the צוואה will become a part of the company's legal structure and obligations. So there's no contradiction or paradox between the legal structure and Tati's צוואה.

The benefit of this approach is that it continues the way Tati outlined and instructed.

The downside of this option is: that certain family members feel that it doesn't provide enough protection to them from the appointed executor and director's ("Moishie") self interest.

And the supporting argument for that approach is that since it's a new corp. It is not bound by the צוואה at all. (Its validity would need to be determined by a Halachic authority)

This leads us to option B.

2. Option B is what I call the **Business partnership** option since this would be a pure business approach without taking any moral or sentimental feelings into account.

This option would be based on the idea that the צוואה is not relevant and a new mutual business arrangement needs to be constructed where I bring the connections and expertise and all the rest of the family brings their blessing and legal commitment not to challenge it in any future time

In this case I personally have to put on a business hat and look at it from my perspective as a new business venture and would have to negotiate for myself a deal that I would have with any other partners in any other business or industry.

Usually I don't get involved with partnerships for less than 51% partnership of the business and a salary draw (against my interests.)

From my various experiences I've learned that what ²אין שתי מלכים משתמשים בכתר אחד say חז"ל is very applicable in business and I would personally not enter a partnership other than where the decision process is an easy one and important decisions can be made expediently.

The benefit of this option would be that there would be a full audited process and a legal structured accountability process which will provide a comfort for those family members who have a lack of trust in the way the צוואה was set up.

The downside of this option is of course that once we move away from Tati's צוואה one can never foresee where we end up. Also, that this will probably incur a much lesser profit for the family members other than Moishie, then option A or possibly option C would provide.

² See; מסכת חולין דף ס' ע"ב, ורש"י בראשית א' ט"ז

3.

Option C is what I call the **New Management**

This option would also be based on deserting the צוואה and not adhering to tati's instructions and that approach would be that the current executor and director ("Moishe") resigns and has some other family member step into the role of managing the company.

The benefit of this option is that a new less experienced manager might be willing to negotiate on much lesser and leaner terms than the current director would, which might lead to greater profits for the rest of the family members.

The downside would be that a less experienced director and manager might not be able to keep the business sustainable which could lead to fatally damaging the business to a point of no return which in that case of course there wouldn't be any monetary gain for anyone.

I personally would go along with any of these three options in no particular order should there be a unanimous preference.

I would like to suggest to all that we all work now thru written memos so no misinterpretations or he said she said type of issues arise.

In that case I would like to suggest as well that we all agree that any comment or demand not written down on a memo (in whichever language) should be considered by everyone meaningless and as nonexistent for the purpose of שלום ושלום.

Sincerely yours,

Moshe Lax